N. W. 102; *Walters* v. *McQuigen*, 72 Wis. 155, 39 N. W. 382. The reason given is that such a contract is entirely collateral to the land. The same reasoning applies to an agreement to find a mortgagee, and the result should be the same. However, contracts between landowners and brokers are notoriously fertile sources of litigation, so that many states have, by special provision, required them to be in writing. 1909 CAL. CIV. CODE, § 1624 (6); 1901 IND. ACTS, 104; 1905 Wash. Laws, 110. But this provision has not been adopted in Victoria. 1915 VICT. STAT., No. 2672, § 228. However, an oral agreement to execute a mortgage is unenforceable. *Clabaugh* v. *Byerly*, 7 Gill. (Md.) 354; *Irwin et al.* v. *Hubbard*, 49 Ind. 350. And an oral executory contract is unavailable as a ground of claim for either party if the promise of one is within the statute. *Johnson* v. *Hanson*, 6 Ala. 351; *Scott* v. *Bush*, 26 Mich. 418. Therefore, the principal case might be supported if the agreement involved a promise by the plaintiff to execute a mortgage to such mortgagee as the defendant should procure. But such a construction seems entirely unwarranted as the contract was essentially one of agency.

STATUTE OF FRAUDS — SALE OF GOODS — EFFECT OF PART PAYMENT ON A SINGLE CONTRACT TO SELL LAND AND PERSONALTY. — The plaintiff sought specific performance of an oral contract by which, he alleged, the defendant promised to sell him a hotel with the furniture therein. The defendant admitted the contract to sell the hotel but denied that it included the furniture. At the time of the contract the plaintiff paid the defendant £30 as part payment, and took a written receipt which described the £30 as "being deposit for sale on Club Hotel." The jury found that the contract was as the plaintiff claimed. *Held*, that the plaintiff is not entitled to the furniture. *Strang* v. *Gordon*, 12 Queens. L. R. 64.

The court based its decision on the ground that the contract as to the furniture did not comply with § 17 of the Statute of Frauds. The plaintiff claimed that the statute was satisfied either by the receipt as a memorandum or by the part payment. The court found that the word "hotel" in the receipt could not be taken to describe the furniture, but is silent as to the plaintiff's second contention. It cannot be denied that the sale of the hotel and the furniture was a single contract. *Scott* v. *Railway Co.*, 12 M. & W. 33; *Thayer* v. *Rock*, 13 Wend. (N. Y.) 53. The payment, therefore, was made on account of the furniture as well as of the realty; and such a payment on general account will take each part of a contract to sell several articles, out of the statute. *Berwin* v. *Bolles*, 183 Mass. 340, 67 N. E. 323. *Cf. Day* v. *Mayo*, 154 Mass. 472, 28 N. E. 898. And while the writing as a memorandum was construed as not including the furniture, yet as a receipt it is not conclusive of the purpose of the part payment. *Powell* v. *Powell*, 52 Mich. 432, 18 N. W. 203, *Shepherd* v. *Busch*, 154 Pa. St. 149, 26 Atl. 363. The plaintiff is not relying on the receipt but on the part payment to take the sale of the furniture out of the statute. In fact, since the contract as to the realty is not here disputed, the plaintiff's case would be equally well off without the receipt at all.

TAXATION — GENERAL LIMITATION ON THE TAXING POWER — VALIDITY OF TAX ON NET INCOME OF FOREIGN CORPORATION ENGAGED IN INTERSTATE COMMERCE. — By a Connecticut statute corporations, foreign or domestic, were required to pay an annual tax of two per cent on that proportion of their net income which their tangible property within the state bore to their total tangible property (1915 PUB. ACTS, c. 292, part 4). The protesting taxpayer was a foreign corporation manufacturing in Connecticut and selling principally to customers in other states. *Held*, that the tax is constitutional. *Underwood Typewriter Co.* v. *Chamberlain*, 108 Atl. 154 (Conn.).

A state may tax a corporation, either foreign or domestic, upon its intrastate business activities, since the state may refuse permission to carry on such business. *Allen* v. *Pullman's Palace Car Co.*, 191 U. S. 171; *Railroad Co.* v. *Maryland*, 21 Wall. (U. S.) 456; *Postal Telegraph-Cable Co.* v. *Richmond*, 249 U. S. 252. But if the corporation is engaged in interstate commerce, the state tax may conflict with the federal government's control over commerce. A state tax levied directly upon interstate commerce is clearly unconstitutional. *Western Union* v. *Kansas*, 216 U. S. 1; *International Paper Co.* v. *Mass.*, 246 U. S. 135. The only question is how far a state may burden interstate commerce indirectly. A state tax on total capital or total gross receipts as such has generally been condemned, unless some reasonable maximum is imposed. *Western Union* v. *Kansas*, *supra*; *Galveston, H. & S. A. Ry. Co.* v. *Texas*, 210 U. S. 217; *Looney* v. *Crane Co.*, 245 U. S. 178; *Baltic Mining Co.* v. *Mass.*, 231 U. S. 68. See 25 HARV. L. REV. 95. But it is said that a tax levied upon the net income of a corporation constitutes only an indirect burden. *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321; *Baldwin Tool Works* v. *Blue*, 240 Fed. 202. *Cf. Peck & Co.* v. *Lowe*, 247 U. S. 165. On this ground the Supreme Court recently sustained a Wisconsin tax upon the net income of a domestic corporation, roughly apportioned to its earnings within the state. *United States Glue Co.* v. *Oak Creek*, *supra*. The reasoning of the court would apply equally well to a foreign corporation. See T. R. Powell, "Indirect Encroachment on Federal Authority," 32 HARV. L. REV. 634. Whether or not a state tax on net income with no attempt at apportionment would escape the commerce clause is very doubtful. See 1917 LAWS OF MISSOURI, 528; 1916 VA. CODE. ANN. ,Vol. IV, 552–554. And such a tax, if levied upon a foreign corporation, would probably violate the Fourteenth Amendment.

TAXATION — LICENSE TAX — CONSTITUTIONALITY OF MOTOR VEHICLE TAX GRADUATED ACCORDING TO CARRYING CAPACITY. — A statute provided for the collection of license fees on motor vehicles transporting freight and passengers for hire or hauling general freight over the public highway. The fee was graduated according to the number of passengers or the volume of freight carried (1919 ARK. STAT., Act 408). The plaintiff sought to enjoin the collection of such fees, alleging the tax to be unreasonable and oppressive, and therefore unconstitutional. *Held*, that the bill be dismissed. *Pine Bluff Transfer Co. et al.* v. *Nichol*, 215 S. W. 579 (Ark.).

Such a tax is a privilege, not a property tax. *Kane* v. *Titus*, 81 N. J. L. 594, 80 Atl. 453; *State* v. *Lawrence*, 108 Miss. 291, 66 So. 745. Accordingly, it cannot be attacked upon the ground of double taxation. *Jackson* v. *Neff*, 64 Fla. 326, 60 So. 350; *Harder's, etc. Co.* v. *Chicago*, 235 Ill. 58, 85 N. E. 245. And it may clearly be imposed in addition to an occupation tax. *St. Louis* v. *Weitzel*, 130 Mo. 60, 31 S. W. 1045; *Macon, etc. Co.* v. *Macon*, 96 Ga. 23, 23 S. E. 120. But see *Newport* v. *Fitzer*, 131 Ky. 544, 115 S. W. 742. A license fee is not a tax within the meaning of constitutional provisions requiring uniformity of rates. *Johnson* v. *Mayor, etc.*, 58 N. J. L. 604, 33 Atl. 850; *Re Kessler*, 26 Idaho, 764, 146 Pac. 113. See 1 COOLEY, TAXATION, 3 ed., 260. A classification of types, with graded rates for each, may therefore be established. *Re Kessler*, *supra*. If such classification proceeds upon a reasonable principle, the courts will sustain it. *Terre Haute* v. *Kersey*, 159 Ind. 300, 64 N. E. 469; *St. Louis* v. *Green*, 7 Mo. App. 468. Engine power has furnished a convenient and legitimate basis for the gradation. *Kane* v. *Titus*, *supra*. The scheme of classification used in the principal case is an even more scientific one, since it is calculated to impose the heaviest tax on the vehicles most destructive to the roads. The classification seems therefore to be clearly constitutional. *Cf. St. Louis* v. *Green*, *supra*.